

COMPTROLLER GENERAL OF THE UNITED STATES WASHINGTON 25

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APR 1 0 1962

B-148496

Mr. R. S. Denatelli, Regional Accounting Officer Post Office Department Philadelphia Regional Office Philadelphia 1, Pennsylvania

Dear Mr. Donatelli:

This refers to your letter of March 23, 1962, with enclosure, claim No. S-495, concerning the claim of Mrs. Marie F. Borke for terminal leave pay believed to be due incident to her service in the Pest Office at Mesdowbrook, Pennsylvania, during the period from 1934 to 1943.

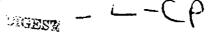
Iou say that the elaiment will visit your office soon to discuss her claim and you request that we notify you of the action we take on her claim. We enclose herewith a copy of our decision of today to Mrs. Borks sustaining the disallemence of her claim.

Very truly yours,

FRANK H. WEITZEL

Assistant Comptroller General of the United States

Enclosure





COMPTROLLER GENERAL OF THE UNITED STATES WASHINGTON 25

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B-1464-6

APR 1 0 1962

Hrs. Faria P. Rorke Handowriew Road R. D. #1 Gape Hay, New Jersey

Dear Mrs. Norke:

This refers to your undeted letter postmarked March 14, 1762, and your letter of February 26, 1962, forwarded here for our consideration by the Post Office Department, requesting further consideration of the action taken by our Office pursuant to the act of Outober 4, 1960, Sh Stat. 1961. Your slain is for terminal leave pay believed to be die incident to your service in the Post Office at Mandowbrook, Permaylvania, during the period from 1954 to 1963.

Your claim was first resoived in the General Accounting Office on Movember 29, 1961, and on December 6, 1961, the Claims Division of our Office informed you that your claim was preclaied from our consideration by the act of October 9, 1940, a copy of which was sent you. That act provides in portional part as follows:

affect every claim or depend (except a claim or demand by any State, ferritory, pessession or the District of Columbia) against the United States sogaimable by the General Accounting Office under ecotion 305 of the Budget and Accounting Act of June 10, 1921 (12 Stat. 24), and the Act of April 10, 1928 (15 Stat. 413), shall be forever berred unless such claim, bearing the signature and address of the claiment or of an anthorized agent or attorney, shall be received in said office within ten full years after the date such claim first accruad: Provided, That when a claim of any perces serving in the military or neval forces of the United States accres in time of war, or when war intervenes within five years efter its secruel, such claim may be presented within five years after peace is established.

"Sec. 2. themover any claim berred by section 1 shall be received in the General Accounting Office, it shall be returned to the claiment, with a copy of this Act, and such action shall be a complete response without further communication."

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On Pebruary 8, 1962, our Office again informed you that your claim was barred from consideration by our Office because more than ten full years had elapsed between the date your claim first account and the date your claim was first received in our Office.

In your letters you repeat your claim and request recensideration encarently without regard to the ten-year statute of limitations of which you were informed in our prior communications. You say that you filed a claim in 1946 in the Post Office at Philadelphia, Pennsylvania. Except in the case of certain members of the military and nevel forces, the statute expressly problems consideration by the General Accounting Office of claims filed here later than ten full years after the date such claim first secreed. The fact that you may have filed a claim with the Post Office Department within the ten-year period would not satisfy the requirements of the act of October 7, 1910, since it provides that such claims must be received in our Office within such period. tay claim that you may have had for terminal leave accrued to you not later than the date of your separation from the Post Office Department in 1943, and since you do not appear to have been a number of the military or mayal forces after that date, the tenyear period in your case expired in 1953. There is no record of your filing any claim in the General Accounting Office (a separate account of the Covernment) prior to that date:

The limitation, prescribed by statute, upon consideration of claims by our Office, is not a mere statute of limitations but is a condition precedent to the right to have claims considered by the General Assounting Office. See Nartlesville Zins Company v. Mallon, %6 R2d 1%1, and Carpenter vv United States, %6 7.2d 62%. Consequently, no exceptions may be made to the provisions of the statute nor may any extension of time within which claims may be filed be granted. See 25 Goop. Gen. 6707 32 id. 267.V is stated before, the fact that you may have filed a claim with the Fost Office Department within the ten-year period involved does not operate to alter the limitation imposed upon our Office by law.

Purthermore, saids from the fact that we are precluded from considering your claim under the set of October 9, 1940, even if your claim had been sent to the General Accounting Office within the ten-year period there was no authority, at the time of your separation from the Federal Service, to pay postal employees a lump-sum payment for accrued annual leave to their credit at the time of separation. It was not until December 21, 1944, that Public Law 525, 58 Stat. 845, was empoted which provided for a lump-sum payment for accumulated or accrued annual or vacation leave due any afficer or employee of the Government in the event of his separation from the service. The act of December 21, 1944, is not retrosectively effective. See 26 Coop. Sen. 512. Prior to

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the passage of Public Law 525 the only way a postal employee could be compensated for accumulated and accrued leave was to be retained on the payroll until he had received salary covered by the period of such leave. Thus, it is evident that you were not entitled to any payment after separation from the service for leave of absence which you failed to receive during Government service. See 16 Comp. Own. 5991 Inther variated States, 101 Ct. Cl. 6hl.

The prior action of our Office in disallowing your claim was correct and must be sustained.

Very truly yours,

FRANK H. WEITZEL

Assistant Comptroller General of the United States